

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

STEVE OLDHAM

PLAINTIFF

V.

NO: 5:12CV00348 KGB/HDY

RAY HOBBS *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Kristine G. Baker. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the

hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiff Steve Oldham, a former inmate incarcerated at the Arkansas Department of Correction, filed this *pro se* complaint, pursuant to 42 U.S.C. § 1983, on September 6, 2012, and was granted leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). On December 13, 2012, Plaintiff filed a change of address notice indicating that he has now been released from custody (docket entry #21). On December 14, 2012, the Court entered an order directing Plaintiff to pay the filing fee, or file an IFP application which reflects his free-world financial status (docket entry #22). That same order warned Plaintiff that his failure to pay the filing fee or to file an IFP application within 30 days would result in the recommended dismissal of his complaint.

More than 30 days have passed, and Plaintiff has not paid the filing fee, filed an IFP application, or otherwise responded to the order. Under these circumstances, the Court concludes that Plaintiff’s complaint should be dismissed without prejudice for failure to pay the filing fee, failure to comply with Local Rule 5.5(c)(2), and for failure to respond to the Court’s order. *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (District courts have inherent power to dismiss

sua sponte a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE for failure to pay the filing fee, failure to comply with Local Rule 5.5(c)(2), and for failure to respond to the Court's order.
2. All pending motions be DENIED AS MOOT.
3. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 17 day of January, 2013.



UNITED STATES MAGISTRATE JUDGE